Calendar No. 106

98TH CONGRESS
1st Session

SENATE

REPORT
No. 98-67

CABLE TELECOMMUNICATIONS ACT OF 1983

REPORT

together with

MINORITY VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 66

TO AMEND THE COMMUNICATIONS ACT OF 1934

APRIL 27 (legislative day, APRIL 26), 1983.—Ordered to be printed

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CONTENTS

	Page
Purpose of bill	1
Background and need	4
Introduction	4
Regulatory history	5
Legislative history	12
Estimated costs	15
Regulatory impact statement	16
Section-by-section analysis	17
Rollcall votes in Committee	32
Changes in existing law	33
Minority views of Mr. Lautenberg	44

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REPORT
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CABLE TELECOMMUNICATIONS ACT OF 1983

APRIL 27 (legislative day, APRIL 26), 1983.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 66]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 66) to amend the Communications Act of 1934, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF BILL

S. 66, as reported, provides as follows:

1. The purposes of this bill are:
(a) To establish a national policy concerning cable;
(b) To establish guidelines for the exercise of regulatory authority;
(c) To allow cable to compete equally in the marketplace; and
(d) To eliminate unnecessary Government regulation.
2. Basic service is defined as the lowest cost tier, other than a discount tier, of service which includes:
(a) Retransmission of local broadcast signals;
(b) Public, educational, and governmental programing; and
(c) Any other programing service offered by the cable operator.
3. Cable service is defined as one-way programing, but not basic service.
4. Telecommunications service is defined as the offering of information by electromagnetic means, but not basic service or cable service.
5. The Federal Communications Commission (FCC) shall have jurisdiction over cable.
6. States, franchising authorities, and so forth, are granted the authority to award one or more cable franchises.
7. No new cable system shall provide basic service or cable service without a franchise.

8. The bill prohibits State or local regulation or restriction of ownership by any person by reason of that person's ownership of any other media or other interests.

9. The FCC has authority to conduct inquiries concerning foreign ownership of cable, and it shall submit any information it obtains of trade barriers to the U.S. Trade Representative.

10. (a) Municipal ownership is allowed;

(b) Municipal acquisition at the end of the franchise is permitted but only at fair market value;

(c) Municipal acquisition during the franchise term is permitted for a material breach by the operator; and

(d) If there is municipal ownership, there can be no government control over programing content, except through an independent board or company.

11. A cable operator may offer in a franchise to set aside channels for public, educational, governmental or other channel users.

12. The franchising authority and the cable operator may establish rules and procedures for the use of access channels.

13. Access channel programing may be combined by the cable operator on fewer channels until sufficient demand develops, and unused channels may be used by the cable operator until there is a demand.

14. The bill does not prohibit any State, franchising authority, and so forth, from regulating the rates charged by cable operators to subscribers for basic service and its related equipment, and for equipment for the hearing impaired.

15. Even when basic rates are regulated, the cable operator may annually increase those rates by the greater of 5 percent or the regional consumer price index. The automatic increases may not apply to current franchises which have a frozen rate for basic service for a specified period.

16. Rates for basic services may not be regulated where the cable system is located within the grade B contour of four television signals, including one affiliate of each network. Current franchises which provide for rate regulation, despite the presence of four signals, are grandfathered for 5 years or one-half the remainder of the franchise term, whichever is greater.

17. No entity (Federal, State, or local) shall have authority to regulate or restrict the provision of or nature of cable services offered over a cable system.

18. No entity (Federal, State, or local) shall have authority to regulate or restrict the provision of or nature of telecommunications services offered over a cable system, except for the provision of basic telephone service.

19. The act does not prohibit franchising authorities and cable operators from specifying that certain cable services shall not be provided or shall be restricted if they are obscene or otherwise unprotected by the U.S. Constitution.

20. (a) Cable operators may be required in a franchise to pay a franchise fee of not more than 5 percent of the operator's annual gross revenues;

(b) The franchise fee includes any tax, fee, or assessment of any kind, but not such things as bonds, security funds, and letters of credit; and

(c) Current franchises which provide for fees to be paid to entities which facilitate access channel use, in excess of the 5-percent limit, are grandfathered.

21. The franchisor shall grant a renewal or extension to the cable operator unless it finds that:

(a) The operator has not substantially complied with the material terms of the franchise and with other laws, or has been convicted of a felony;

(b) There has been a material change in the legal, technical, or financial qualifications of the operator that would substantially impair service;

(c) The facilities to be provided are unreasonable in light of the community need and their cost;

(d) The signal delivered has not met the FCC's technical standards; or

(e) The renewal proposals are otherwise unreasonable.

22. (a) The operator must file for renewal at least 2 years before expiration;

(b) The franchising authority may not accept or consider competing applications;

(c) The franchising authority shall negotiate in good faith and make a final decision within 1 year after the application is filled; and

(d) If renewal is denied, the cable operator may obtain judicial review.

23. No person shall unlawfully intercept or receive broadband telecommunications.

24. Except in very limited instances the cable system cannot be used to collect personally identifiable information about a subscriber, and no cable operator shall disclose personally identifiable information about a subscriber without prior written or electronic subscriber consent or upon court order.

25. Channel programers and cable operators remain subject to criminal and civil liability for libel, slander, and so forth, but cable operators are not liable for programs carried on any of the access channels or for programs required by law to be carried.

26. No State, franchising authority, and so forth, may require the operator to provide programing, facilities, equipment, services, or other items of value which are not related to the provision of broadband service.

27. A franchising authority may require in the initial franchise:

(a) Channels for governmental access; and

(b) Cable facilities and equipment.

28. A cable operator may offer, as part of basic service or any other tier of service:

(a) Channels for access uses; and

(b) Particular services.

29. A cable operator may replace or remove particular services or facilities if there has been a significant change in circumstances.

30. Any franchise agreement in existence on the date of enactment of the bill which requires the cable operator to provide programing, services, facilities, equipment, or access channels is grandfathered as to those provisions.

31. No entity (Federal, State, or local) shall have authority to impose, on a cable system, regulation as a common carrier or utility,

32. The Federal Government shall have exclusive jurisdiction over cable regarding matters covered in this act, and any State or local law which is in conflict is superseded, null and void, and of no effect 6 months after date of enactment.

33. Nothing in this act prohibits a State, franchising authority, and so forth, from exercising jurisdiction over matters of strictly local concern and which are necessary for reasons of public health, safety, and welfare, including the terms and conditions for the granting of a franchise, the construction and operation of a cable system, and the enforcement and administration of a franchise.

34. The FCC shall encourage new and additional services and such services will be presumed to be in the public interest if they are technically feasible without causing interference.

35. This act takes effect on the date of enactment.

Background and Need

INTRODUCTION

This report will explain in great detail the legal and economic rationale for this legislation, S. 66. But before describing the current status of the cable industry and its role in our national communications system, and its position in the marketplace for telecommunications services, the committee believes that it is important to describe the components of a cable system.

Because over-the-air TV broadcast signals tend to travel in straight paths, their signals diminish with increasing distance. As a result, they lose clarity when encountering immovable obstacles like mountains or tall buildings. A cable system distributes electromagnetic signals to subscribers' television sets via a cable or, more recently, by an optical fiber. These signals reach the viewer with the same clarity as seen at the point of origin.

Cable systems receive programing either from antennae constructed on high ground that pick up signals off-the-air, or from microwave, or from satellite relays. The signals are then transmitted to a "head-end" site, where electronic equipment processes the signals for cable transmission into homes. The network of cable (or optical fiber) that carries the programing into the homes is either attached to utility poles or placed in underground conduits. Amplifiers placed along the cable line ensure the quality of the signal. Therefore, cable provides interference-free service.

In the home, the cable is attached to the back of an ordinary television set. A converter can expand the channel capacity of any such set to well over 100 channels. This complete the description of how cable functions. If a cable subscriber obtains two-way service, a keyboard is also included.

Since adoption of the Commission's comprehensive cable regulatory program in 1972, the cable industry has grown dramatically. Today, there are more than 4,700 systems serving almost 24 million subscribers, and industry revenue totaled $2.3 billion in 1980. The number of cable subscribers is growing at a rate of more than 250,000 per

month, and it is estimated that by 1990, half of all American homes will be wired for cable. Not only has the industry increased in size, it also has evolved into much more than just a delivery service for the retransmission of local broadcast signals and the importation of distant broadcast signals. Systems being built in major markets today have the capacity for as many as 100 channels incorporating local and distant signals, multiple tiers of pay programing, locally originated information and entertainment, text services, C–SPAN's transmission of the proceedings of the House of Representatives and Senate committee proceedings, 24-hour news channels, health programing, religious programing for children and other special audiences, alert and alarm services, and networks specializing in sports events. In fact, the Commission's efforts to update its rules, as well as congressional efforts to address problems arising from the development of this new medium, barely have kept pace with technological innovation and consumer interest.

The Commission's recent actions deregulating the cable industry, coupled with significant court decisions eliminating many restrictive regulations adopted in the early 1970's, attest to cable's evolution. Rules once imposed to guide cable in its early stages of development no longer are necessary due to demonstrated expertise by the industry, increased understanding about, and familiarity with, the industry by State and local officials and consumers.

In addition, advances in the delivery of video services in general have led to a more competitive environment for cable systems. With the development of multipoint distribution services, subscription television stations, videodiscs and cassettes, master antenna television and satellite master antenna television systems, low power television stations, and direct satellite-to-home broadcast systems, the role of cable in our national telecommunications system has changed. As a result, the need to regulate cable as was originally proposed by the Commission in 1972 is seriously in doubt.

In our effort to encourage fair competition, to insure maximum service offerings, and to achieve parity of treatment among the providers of comparable telecommunications service, the committee believes that marketplace forces, rather than Government regulations, should prevail. Unnecessary or excessive regulation can impede the interstate development of cable services to the ultimate detriment of all American consumers.

REGULATORY HISTORY

Local regulation

The first commercial community antenna television system (CATV) in the United States was started in 1948 in Mahanoy City, Pa.[1] Since that town is surrounded by mountains, direct reception of television signals was difficult or impossible. To remedy that problem, an elementary cable system was constructed by placing a receiving antenna on top of a nearby mountaintop and running a cable distribution system from the antenna down to the subscribers' homes in Mahanoy City.

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[1] See Subcommittee on Communications of the House Committee on Interstate and Foreign Commerce "Cable Television: Promise Versus Regulatory Performance," 94th Congress, 2d session 9 (1976). Other documents indicate that the first noncommercial system originated in Astoria, Oreg., in 1949, and the first commercial system in 1950 in Lansford, Pa. Subcommittee on Communications of the House Committee on Interstate and Foreign Commerce, "Regulation of Community Antenna Systems," H. Rept. 1635, 89th Congress, 2d session 5 (1966).

This initial cable system was typical of virtually all early cable systems in its provision of television signals in areas where normal reception of those signals was difficult or impossible.

These first cable operations were small local ventures, often owned by community groups or by television repair shop owners. Their primary role of providing improved television reception required little or no regulation.

As cable developed through its early years, municipal involvement was generally limited to authorizing use of local streets and rights of way and adopting regulations to protect the safety of life and property. The franchises which authorized their operations were simple documents which reflected basic services provided by the systems.

These franchises (often simply called a license) would be granted merely upon a company's application therefore. The document would authorize the cable system to use local streets, rights of way, easements, etc., for erecting poles and stringing the wires, cables and conduits necessary for its operations. These franchises often contained provisions regulating the manner in which the streets would be used, establishing construction standards, and dealing with matters such as the repair of sidewalks and streets after construction. These early franchises usually had lengthy terms, often 30 years, and might or might not impose a modest fee for the use of the rights of way.

As technology expanded and cable systems became capable of offering more services, local municipalities interest in, and thus their regulation of, cable began to increase. The FCC's 1972 Cable Television Report and Order [2] opened the cities to cable. As a result, local municipalities began to adopt more extensive franchises.

These cable franchises dealt with matters such as service requirements and rate regulation. In addition, many franchises sought to regulate matters which were clearly of Federal rather than local concern, and this prompted specific FCC decisions to preempt such provisions. For example, the FCC held that regulation of broadcast signal carriage,[3] certain technical standards [4] and regulation of any aspect of pay cable service,[5] were all matters appropriate for comprehensive and uniform Federal regulation.[6]

Unlike previous licenses which were based upon the police power, many modern cable franchises touch virtually every aspects of a cable system's operation.

The premise for the exercise of this expanded local jurisdiction over cable systems continues to be its use of local streets and rights of way. In the past, local regulation bore a reasonable relationship to that use. With the introduction of cable into larger markets and the expansion of services provided over cable, the degree and detail of local regulation has increased and there is no longer a reasonable relationship between local regulation and cable systems' use of streets and rights of way.

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[2] Cable Television Report and Order, 36 F.C.C. 2d 143 (1972), reconsidered, 36 F.C.C. 2d 326 (1972).

[3] Clarification of Cable Television Report and Order, 46 F.C.C. 2d 175, 178 (1974); Champaign-Urbana Communications, Inc., 52 F.C.C. 2d 425, 431 (1974).

[4] Report and Order, Docket No. 20018, 49 F.C.C. 2d 470 (1974).

[5] First Report and Order, Docket No. 19554, 52 F.C.C. 2d 1, 68 (1975): Anthena Cablevision of Corpus Christi, Inc., 59 F.C.C. 2d 1035 (1976); Oceanic Cablevision, Inc., 68 F.C.C. 2d 1426, 1429 (1978); People's Cable Company, 60 F.C.C. 2d 905, 907 (1976). Federal preemption of pay cable matters has also been judicially approved, *Brookhaven Cable TV, Inc.* v. *Kelly*, 573 F.2d 765 (2d Cir. 1978), cert. denied, 99 S. Ct. 1991 (1979).

[6] The F.C.C. also preempted local regulations which exceeded the requirements of its former access rules. See, e.g., Comcast Cable of Paducah, Inc., 59 F.C.C. 2d 1075 (1975); Arlington Telecommunications Corp., d/b/a ARTEC, 53 F.C.C. 2d 757 (1975).

S. 66 seeks to restore the jurisdictional boundaries over cable to their more traditional positions. As was pointed out by the FCC:

> The ultimate dividing line, as we see it, rests on the distinction between the use of the streets and rights-of-way and the regulation of the operational aspects of cable communications. The former is clearly within the jurisdiction of the States and their political subdivisions. The latter, to the degree exercised, is within the jurisdiction of the Commission—Report and Order, Docket No. 20772, 54 FCC 2d 855, 861 (1975).

State regulation

Although the franchising process is principally controlled by local municipalities, at the present time the States are free to impose or superimpose their own regulatory scheme. The State of New York, for example, has a State cable commission which has as many employees as the cable division of the FCC's Mass Media Bureau. While the Federal Government, through the FCC, has been reducing regulations of the cable industry, there has been an increase in the involvement of State government in this industry.

According to information compiled by the FCC,[7] some States have established independent commissions on cable, while others regulate through State public utility or public service commissions. But other States have enacted specific statutes granted franchising authority to counties or local municipalities.

While new State regulatory statutes have been enacted, it is also true that other States, for example, California and Massachusetts, have taken statutory action to deregulate cable.

It is not in the public interest for the States to replace the regulation that has been consciously abandoned at the Federal level with their own regulatory scheme. Federal deregulation is not intended to allow assertion of regulation by another branch of Government, it is intended to allow cable to compete in the marketplace with other providers of comparable services. For that reason, a definitive jurisdictional framework is essential.

Federal regulation

As was indicated previously, cable began as a way to provide improved television reception in areas where off-the-air reception of those signals was difficult or even impossible. And, in its early history, cable was subject to a minimum of regulation by local municipalities. Federal regulation was asserted only after broadcasters came to the FCC with the argument that they were being subjected to unfair competition from cable operators.

In 1948, the FCC announced that it would not act on any new or pending applications for the construction of television stations until it adopted a national allocation plan. This freeze was lifted in 1952. Sixth Report and Order on Television Allocations, 41 F.C.C. 148 (1952).

After the freeze was lifted, there was an increase in the number of television stations. So too was there an increase in the number of cable

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[7] Briley, "Cable Television State Regulation—A Survey of Franchising and Other State Law and Regulations" (FCC 1977, 1980); "Cable Television State Legislation, 1982".

systems. This was when broadcasters began to be concerned about the competitive threat presented by cable.

In 1956, a group of television licensees alleged that cable operations would have an adverse economic impact on broadcasting, and thus asked the FCC to assert jurisdiction over cable under title II, the common carrier provisions of the Communications Act of 1934.[8] The FCC declined to do so, and held that cable systems could not be considered common carriers under the statutory scheme of the 1934 Act.

As technology improved and demand increased for additional television signals, cable systems began to "import" television signals from distant markets using common carrier microwave facilities. The common carriers had to obtain FCC approval before they could provide cable systems with this service.

In a very significant decision, *Carter Mountain Transmission Corp.*,[9] the FCC denied an application for such authority. It found that the proposed carriage by the cable system of distant signals, which duplicated much of the programing on the local TV stations, would cause economic injury to the stations. The FCC did say, however, that carriage of the distant signals would be authorized if the local station were carried as well, and if the duplicated programing were deleted of blacked out.

Three years later, the FCC asserted direct jurisdiction over microwave-fed cable systems.[10] The rules that the FCC adopted required microwave-fed cable systems to carry all local television stations upon request, and to prevent duplicating the programs carried by local stations, either simultaneously or within 15 days of when they were aired.

It was only 1 year later when the Commission assumed jurisdiction over all cable systems.[11] The rules it adopted required mandatory signal carriage and kept the program exclusivity provisions (now only same day protection). The rules also required cable systems within the nation's 100 largest television markets which proposed to import distant television stations to first establish, in a hearing, that such importation would not harm local broadcasters.

These hearings, however, turned out to be totally unworkable, and the effect was to prevent cable service from being introduced into the country's largest cities. As a result, the FCC halted these hearings while it looked for possible alternatives for distant signal regulations.[12]

In 1972, these proceedings culminated in the issuance by the FCC of the Cable Television Report and Order (1972 report).[13] In the 1972 report, the Commission adopted rules regulating television

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[8] 47 U.S.C. Sections 151 et seq. The Communications Act of 1934 does not contain any provisions authorizing Federal regulation of cable. The Supreme Court has approved FCC regulation of cable under the Act when it is "reasonably ancillary" to its authority over broadcasting. See *United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968); *United States* v. *Midwest Video Corp.*, 406 U.S. 649 (1972).

[9] *Carter Mountain Transmission Corp.*, 32 F.C.C. 459 (1962) aff'd, *Carter Mountain Transmission Corp.* v. FCC, 321 F. 2d 359 (D.C. Cir. 1963), cert denied, 375 U.S. 951 (1963).

[10] First Report and Order, Dockets Nos. 14895 and 15233, 38 F.C.C. 683 (1965).

[11] Second Report and Order, Dockets Nos. 14895, 15233 and 15971, 2 F.C.C. 2d 725 (1966).

[12] See, e.g., Notice of Proposed Rulemaking and Notice of Inquiry, Docket No. 18397, 15 F.C.C. 2d 417 (1968); Second Further Notice of Proposed Rulemaking, Docket No. 18397–A, 24 F.C.C. 2d 580 (1970).

[13] Cable Television Report and Order, 36 F.C.C. 2d 143 (1972), reconsidered, 36 F.C.C. 2d 326 (1972). In addition to dealing with signal carriage, the 1972 Report also terminated rulemaking proceedings involving technical performance (Notice of Proposed Rulemaking, Docket No. 18894, 25 F.C.C. 2d 38 (1970)); and the division of regulatory responsibility among Federal, State and local governments (Notice of Proposed Rulemaking, Docket No. 18892, 22 F.C.C. 2d (1970)).

broadcast signal carriage by all cable systems; requiring the deletion of network and syndicated programing of distant television stations; and requiring cable systems located within the 100 largest television markets to have a minimum of 20 channels, two-way capacity and four dedicated access channels for public, educational, local government and leased access purposes. Systems having more than 3,500 subscribers were required to originate locally produced programing (cablecasting). The 1972 report also adopted rules concerning technical standards and the division of Federal, State and local regulatory authority. Finally, it instituted certifiaction procedures for cable systems.

The FCC established in the 1972 report the basic Federal regulatory framework for the cable industry, and this framework still exists today. Although a number of those rules have been substantially altered or deleted as a result of judicial decisions, as well as the FCC's own deregulatory efforts.

For example, the Commission has modified or eliminated its rules governing pay cablecasting,[14] local origination cablecasting,[15] local franchise standards,[16] and access channels.[17] Rules governing carriage of television broadcast signals were also liberalized.[18] Finally, in 1980 the Commission issued its Report and Order in Docket Nos. 20988 and 21284,[19] eliminating almost all of its restrictions on the carriage of distant television stations and deleting its rules requiring cable systems to provide syndicated exclusively protection.

To elaborate on the subject of governmental regulation of cable, in its 1972 Report, the Commission addressed various aspects of rate regulation in subpart C of the rules entitled, "Federal-State/Local Regulatory Relationships."

The Commission stated that it was requiring local authorities to regulate rates for services regularly furnished to all subscribers and for equipment installation, and added that the appropriate regulatory standard would be the maintenance of rates that were fair to the system and to the subscribing public. The Commission said that fairness of rates would turn on the facts of each case and on the accumulated experience of other communities served by cable.

The 1972 rules required franchise authorities to specify or approve initial subscriber and installation rates; to institute a program for rate review and, if necessary, rate adjustment; and to give reasonable advance notice to the public of proposed rate changes. In addition, rate adjustments were permitted only after a public proceeding affording due process to all parties.

With respect to franchise fees, the 1972 Report took notice of the fact that many local authorities had extracted high fees more for

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[14] Report and Order, Dockets Nos. 19554 and 18893, 67 F.C.C. 2d 252 (1977). This action followed the court's decision in *Home Box Office, Inc.* v. *FCC*, 567 F.2d 9 (D.C. Cir. 1977), cert. denied, 434 U.S. 829.

[15] Report and Order, Docket No. 19988, 49 F.C.C. 2d 1090 (1975).

[16] Report and Order, Docket No. 21002, 79 F.C.C. 2d 390 (1977).

[17] Report and Order, Docket No. 20508, 59 F.C.C. 2d 294 (1976); Order, Docket No. 20508, 45 F.R. 76170 (November 18, 1980). This action followed the Supreme Court's decision in *FCC* v. *Midwest Video Corp.*, 440 U.S. 689 (1979).

[18] See, e.g., Report and Order, Docket No. 19859, 57 F.C.C. 2d 68 (1976); First Report and Order, Docket No. 20553, 58 F.C.C. 2d 442 (1976); recons. denied, 60 F.C.C. 2d 661 (1976); Report and Order, Docket No. 20028, 48 F.C.C. 2d 699 (1974); Memorandum Opinion and Order, 54 F.C.C. 2d 1182 (1975); and Report and Order, Docket No. 20487, 57 F.C.C. 2d 625 (1976).

[19] 79 F.C.C. 2d 663 (1980), aff'd sub nom., *Malrite T.V. of New York* v. *FCC*, 652 F. 2d 1140 (2d Cir. 1981).

revenue-raising than for regulatory purposes. From such evidence, the Commission concluded that some limits were necessary to insure reasonableness, and to strike a balance between the achievement of regulatory goals and the assurance of adequate revenue to defray the cost of local regulation. In setting a limit, the Commission explained that it also was concerned about other costs imposed, or about to be imposed, on cable systems, such as: (1) those resulting from the ongoing dispute over utility pole attachment rates and the claims of telephone and electric power companies; (2) the Commission's own annual fee of 30 cents per subscriber to help finance its cable regulatory program; (3) new obligations resulting from adoption of the Commission's comprehensive rules; and (4) the near-term prospect of congressionally imposed copyright payments. After weighing all of these factors, the Commission concluded that a maximum franchise fee of between 3 and 5 percent of gross subscriber revenues would be adequate to compensate local authorities for their regulatory program. At the same time, it would not interfere with the cable industry's ability to meet the obligation imposed by the FCC's rules, or to participate effectively in the national communications system.

Following the adoption of the 1972 Report, there was still concern about the need for particular regulations, and also about the appropriate regulatory jurisdiction for those regulations. In particular, the cable industry sought elimination of regulations it believed were excessive or duplicative, and expressed frustration about inconsistent and conflicting Federal, State, and local rules. For example, uncertainty was expressed about the force of the Commission's rate regulation requirement in states where local governments did not possess rate regulation authority.

In response to this concern, the Commission initiated a proceeding in 1975 to determine whether it should continue to require local authorities to regulate subscriber and installation rates. In its Notice of Proposed Rulemaking in Docket No. 20681, 57 FCC 2d (1975), the FCC proposed that rate regulation be discretionary, but stated that if a franchisor had appropriate authority, and decided to engage in rate regulation, such authority should be exercised only after adopting procedures insuring public notice and due process.

The FCC issued a Report and Order in Docket No. 20681 in 1976, terminating the proceeding and deleting the rule requiring local authorities to engage in rate regulation (60 FCC 2d 672 (1976)). Explaining its action, the Commission stated that unintended problems had arisen from the rate regulation requirement, and it expressed confidence that most, if not all, subscriber rate problems could be settled effectively through local procedures.

During the pendency of this proceeding, the Commission initiated another proceeding into the procedures for establishing subscriber rates (Notice of Inquiry in Docket No. 20767, adopted April 1, 1976, 58 FCC 2d 915 (1976)). Its purpose was to gather factual information relating to the establishment of cable subscriber rates, the need for and efficacy of the process, associated costs, benefits, and problems, and what role, if any, the Commission should play in the process. To the Committee's knowledge, this proceeding has never been terminated.

In 1977, the Commission issued a Report and Order in Docket No. 21002, in which it announced its decision to delete its franchise stand-

ards (66 FCC 2d 380 (1977)). In response to numerous petitions for reconsideration and clarification, the Commission, in 1979, adopted a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking stating that it was not persuaded that its earlier action was incorrect, but that it did believe it necessary to give further consideration to the rule limiting the franchise fee that a local municipality or state could impose as part of the francishe process (71 FCC 2d 569 (1979)). The Commission has received numerous comments on its proposal to eliminate the franchise fee limit, but has not yet issued a final decision.

The Commission's recent actions deregulating the cable industry, coupled with significant court decisions eliminating many restrictive regulations adopted in the early 1970's, attest to cable's evolution. Rules once imposed to guide cable in its early stages of development are no longer necessary due to demonstrated expertise on the part of the industry itself, and to increased understanding about, and familiarity with, the industry on the part of state and local officials, and potential cable subscribers.

In addition, advances in the delivery of video services in general have led to a more competitive environment for cable systems. With the development of competitive programing services, the role of cable in our national telecommunications system has changed, and the need to regulate cable as was originally proposed by the Commission in 1972 is seriously in doubt.

In our effort to encourage fair competition, to insure maximum service offerings, and to achieve parity of treatment among the providers of comparable telecommunications services, the committee believes that the marketplace forces, rather than Government regulation, should govern and prevail.

This bill restores the jurisdictional framework for cable to its traditional and appropriate balance. That balance continues to give local governments the authority over areas of local concern and authorizes them to protect local needs. At the same time, however, the bill maintains the ability of the FCC to exercise its long-standing jurisdictional authority over cable in a manner which will protect the Federal interest, embodied in this legislation, in a competitive marketplace.

One other area of local concern which is not specifically addressed in this bill but which deserves mention in this committee report is carriage by cable systems of local broadcast signals. Although this issue was addressed in legislation in the 97th Congress (H.R. 5949), that bill did not pass the Senate.

During the hearings on S. 66, the committee heard testimony from Mr. Jerry Holley, a broadcaster, about broadcasters' interests with regard to this bill. He indicated that broadcasters are concerned about their continued access to their local cable systems, and he stressed the importance of the present "must carry" requirements. The committee believes that this is a legitimate concern. Given the current compulsory licensing scheme for cable systems under the copyright laws, if the "must carry" rules were eliminated, local cable operators might not carry some local broadcast stations, or would be in a position to charge an unreasonable price to let a broadcaster on their systems.

The committee recognizes the importance of local programing and opposes anything that would undercut that service. While the commit-

tee believes that the answer to this issue may ultimately be found in the marketplace, under the current regulatory framework and existing copyright law, the committee sees a need to continue the existing "must carry" rules to protect the public interest. Of course, the FCC may need to update these rules to resolves problems that may arise.

LEGISLATIVE HISTORY

During the 96th Congress, several bills were introduced to amend the Communications Act of 1934 to provide improved telecommunications service and equipment, develop marketplace competition, and deregulate such services and equipment. S. 622, a bill "to amend the Communications Act of 1934 in order to encourage and develop marketplace competition in the provision of certain services and to provide certain deregulation of such services, and for other purposes," was introduced on March 12, 1979, by Senators Goldwater, Schmitt, Pressler, and Stevens. S. 611, a bill "to amend the Communications Act of 1934, as amended, to provide for improved domestic telecommunications development, to establish a national commission on spectrum management, and for the other purposes" was introduced on March 12, 1979, by Senators Hollings, Cannon, and Stevens. Hearings were held for both S. 622 and S. 611 on April 24, 25, 26, 27, 30; May 1, 2, 3, 9, 10, 11, 16; June 5, 6, 7, 8, 13, 14, 15, 18, 19, and 25 1979. The Communications Subcommittee heard testimony from 171 witnesses S. 622 contained several provisions similar to those in S. 2172.

In the second session of the 96th Congress on June 12, 1980, Senators Hollings, Cannon, Packwood, Goldwater, and Schmitt introduced S. 2827 to "amend the Communications Act of 1934, to provide for improved domestic and international telecommunications, rural telecommunications development, and for other purposes." No hearings were held on S. 2827. That bill also contained provisions relating to cable.

S. 898, the Telecommunications Competition and Deregulation Act of 1981, a bill "to amend the Communications Act of 1934 to provide for improved domestic telecommunications, and for other purposes," was introduced during the first session of the 97th Congress on April 7, 1981, by Senators Packwood, Goldwater, Schmitt, and Stevens. The full Commerce Committee held hearings on June 2, 11, 15, 16, 19, and 22, 1981, and heard testimony from 66 witnesses.

The Committee on Commerce, Science, and Transportation met in open executive session on July 16, 1981, to consider S. 898 and ordered the bill reported with amendments by a vote of 16 to 1. Several of the amendments related to cable.

During Senate debate on S. 898, Senators Packwood and Cannon proposed an amendment to the cable provisions in the bill. The Packwood-Cannon amendment passed by a vote of 52 to 40, with 1 voting present. Senator Goldwater then introduced an amendment to delete all of the cable provisions in S. 898 with the exception of section 237 (the telephone company-cable crossownership section). This amendment passed by a vote of 59 to 34, with 1 voting present. Senator Boschwitz introduced an amendment to strike the final cable provision, section 237, mentioned above. That amendment was defeated by a vote of 54 to 38, with 1 voting present.

A short time later, the Commerce Committee held 2 days of field hearings on cable. The first was in Seattle, Wash., on January 18, 1982, chaired by Senator Packwood, and attended by Senator Gorton. The Committee heard testimony from 10 witnesses. The second hearing was in Albuquerque, N. Mex., on February 16, 1982, and was chaired by Senator Schmitt. The Committee heard from 10 witnesses as well. In addition, statements were received for the record from 18 other parties.

Based upon this evidence, and many months of study of the issues, on March 4, 1982, Senator Goldwater introduced S. 2172, the Cable Telecommunications Act of 1982. Senator Kasten was an original cosponsor, and later, Senators Schmitt, Kassebaum, and Stevens were added as cosponsors.

The Subcommittee on Communications held 3 days of hearings on April 26, 27, and 28, 1982 on that bill, heard testimony from 54 witnesses, and received statements from scores of others. After the hearings, the staff evaluated all of the testimony and comments received by the subcommittee. Amendments to S. 2172 proposed by the staff were widely circulated on July 2, 1982.

The Committee on Commerce, Science, and Transportation met in open executive session on July 22, 1982, to consider S. 2172 and ordered the bill reported with amendments by a vote of 13 to 3.

S. 2172 was not brought to the full Senate for a vote before adjournment of the 97th Congress at the end of 1982. Thereafter, on January 26, 1983, at the beginning of the 98th Congress, Senator Goldwater introduced S. 66, the Cable Telecommunications Act of 1983. That bill was virtually identical to the previous year's revised version of S. 2172. Hearings were held before the Subcommittee on Communications on S. 66 on February 16 and 17, 1983. Testimony was received from 17 witnesses, and there were numerous submissions for the record.

Over the next several months, the National League of Cities (NLC) and the National Cable Television Association (NCTA) held a series of meetings in an attempt to reach a compromise on cable legislation. As a result of their sucessful efforts, S. 66 was revised to substantially reflect their agreement. The revised version was offered by Senator Goldwater at executive session of the Committee on March 22, 1983 as an amendment in the nature of a substitute.

During that executive session, the cable bill was discussed in detail. However, several members of the Committee expressed a desire to postpone final consideration due to the shortness of time within which they had had a chance to review the bill. Therefore, the chairman of the Subcommittee on Communications, Senator Goldwater, and Senator Packwood, chairman of the full Commerce Committee, agreed to postpone final consideration until a later date.

Thereafter, the NLC reevaluated its position and support for the compromise legislation. In a four-page letter dated April 6, 1983, from Mayor Charles Royer, president of the NLC and Mayor of Seattle, Wash., to Thomas Wheeler, president of the NCTA, Mayor Royer detailed several major areas in the amended version of S. 66 which would have to be revised in return for the NLC's continued support of the bill.

19-793 O - 83 - 3

As a result of this letter, more negotiating sessions were held which included the NLC, the NCTA, and majority and minority committee staff members. These negotiations culminated in a further amended version of S. 66 (on April 20, 1983), which was wholeheartedly endorsed by both the NLC and the NCTA. Virtually every change requested by the NLC was eventually conceded to by the NCTA and placed in the bill.

Below is a list of the revisions which were made:

1. The section which provided that no Federal agency can prohibit ownership of cable systems by any person was eliminated, so that the FCC would continue to have the authority to impose cross-ownership restrictions.
2. The franchising authority and the cable operator were allowed to establish rules and procedures for the use of access channels.
3. The 5 percent franchise fee limit does not include such things as bonds, security funds, and letters of credit.
4. Personally identifiable information about a cable subscriber could be obtained with prior written or electronic consent.
5. The criminal or civil liability of channel programers or cable operators was not affected.
6. Any franchise agreement in existence on the date of enactment of the bill which requires the cable operator to provide programing, services, facilities, equipment, or access channels is grandfathered as to those provisions.
7. States, franchising authorities, and so forth, may exercise jurisdiction over matters which are of strictly local concern and which are necessary for reasons of public health, safety, and welfare, including the terms and conditions for the granting of a franchise, the construction and operation of a cable system, and the enforcement and administration of a franchise.
8. The act takes effect on the date of enactment.

The NLC and the NCTA sent a letter of endorsement, dated April 21, 1983, for the revised version of S. 66, which was jointly signed by Mayor Royer and Mr. Wheeler. A copy of that letter follows:

NATIONAL LEAGUE OF CITIES,
Washington, D.C., April 21, 1983.

Hon. BARRY GOLDWATER,
U.S. Senate, Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR GOLDWATER: The National League of Cities and the National Cable Television Association urge your support for the new redraft of S. 66. In our view, this new draft not only substantially reflects the NLC–NCTA compromise agreement on Federal cable legislation but also resolves the issues which forced the NLC to call for clarification to that agreement.

In recent weeks, we have continued negotiations designed to solve specific problems raised by the staff draft of S. 66. The NLC requested modifications to the compromise and to the staff draft and NCTA has agreed to these changes. Consequently, the new redraft of S. 66 now before you contains provisions which ameliorate NLC's concerns.

NLC and NCTA strongly support S. 66, as redrafted, and urge your approval of the bill and speedy considration by the full Senate.

Sincerely,

CHARLES ROYER,
President, National League of Cities.
THOMAS E. WHEELER,
President, National Cable Television Association.

The Committee on Commerce, Science. and Transportation met in open executive session on April 21, 1983, to consider S. 66 and ordered the bill reported with amendments by a vote of 15 to 2.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 22, 1983.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 66, the Cable Telecommunications Act of 1983, as ordered reported by the Senate Committee on Commerce, Science and Transportation, April 21, 1983.

S. 66 would establish guidelines for Federal, State and regulatory authorities in the area of cable systems. It would authorize the Federal Communications Commission (FCC) to conduct inquiries regarding foreign access to domestic cable markets, and to submit this information to the United States Trade Representative. Several other provisions of S. 66 may also require FCC involvement, particularly if disputes arise in the area of broadband telecommunications or interactive services, although it is not expected that the additional costs in these areas will be significant.

S. 66 would also require the FCC to process requests for additional services within one year, thus affecting the Common Carrier, Mass Media and Private Radio Bureaus. The burden of proof would be upon the FCC to show that the service is not technically feasible, in contrast to the current system, which requires the applicant to prove the viability of the proposed service. Currently, a number of applications are not processed within this 1-year timeframe, particularly if research studies are required or international treaties or negotiations are involved. Depending upon the number and complexity of new applications, this provision could result in additional costs to the FCC of approximately $1 million to $3 million annually.

In addition, section 610 would give the Department of Justice (DOJ) authority to monitor the security and privacy of broadband telecommunications. According to the FCC, it is estimated that

approximately 10 percent of all cable viewers, or about three million households throughout the country, are illegally using cable services. According to the DOJ, it is likely that it would respond to complaints, but it is not clear at this time how it would implement this provision, since no mechanism currently exists for this type of monitoring.

S. 66 would also establish a 5-percent ceiling for franchise fees that the cable operators pay to State or local governments. Based on 1981 industry data, total franchise fees of $76 million were paid to State and local governments. This represents approximately 2.4 percent of total operating revenues of $3.2 billion. Current law establishes a ceiling for franchise fees of 3 percent unless the FCC grants a waiver. If the higher ceiling were adopted for new franchises as well as renewals, revenues to local and State governments could increase. Because S. 66 would allow, but not require a higher franchise fee, and because the fees are negotiated, it is not possible to estimate the additional revenues which will accrue to local and State franchisers as a result of this provision.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee provides the following evaluation of the regulatory impact of the legislation:

S. 66, as reported, would eliminate some present regulatory obligations undertaken by the FCC in the cable field and, in doing so, reduce the need for administrative resources in these areas. The bill would also create additional regulatory responsibilities for the FCC and may, therefore, require the assignment of additional resources. Finally, S. 66 would clarify or ratify existing FCC authority in a number of cable areas and, therefore, would preserve the need for assignment of administrative resources in these areas.

There are a few provisions in S. 66 that would add to existing regulatory responsibilities now undertaken by the FCC. Section 605 of the proposed legislation would confer upon the FCC the authority to conduct inquiries regarding foreign access to domestic cable markets, and to submit this information to the U.S. Trade Representative. Although FCC exercise of authority under this section is discretionary, if the FCC were to decide to conduct inquiries, additional resources might be necessary.

Section 608 of the bill would basically codify the FCC's existing regulations relating to reasonable ceilings on cable franchise fees, but would take away oversight authority from the FCC.

There is a specific withdrawal from regulation in section 607. Section 607(f) restricts the authority of Government at any level to regulate or restrict the provision of or nature of cable services offered over a cable system, and section 607(g) contains the same restrictions as it applies to telecommunications services.

Other existing regulations are unchanged, including such matters as signal carriage (must carry rules, network nonpublication, and sports

blackout rules), equal employment opportunity rules, telephone and other cross-ownership rules, pole attachment rules, technical standards (radiation and nondegradation), forms and information collection, and fairness doctrine and equal opportunity rules. Other content control rules for nonbasic service, including lottery, obscenity, and sponsorship identification rules would be eliminated by section 607(f).

Finally, the remainder of the bill, as well as section 3 which has provisions for new and additional services, should not have any appreciable regulatory impact.

The committee does not anticipate any increase in FCC staff as a result of this bill. It believes that the FCC should be able to administer its responsibilities within currently available resources.

The committee does not intend that this measure authorize the enactment of any additional budget authorization for fiscal year 1983 or fiscal year 1984. The committee intends that any fiscal year 1983 or 1984 costs incurred from the enactment of this bill will be absorbed by the FCC.

Section-by-Section Analysis

SECTION 1—TITLE VI—CABLE TELECOMMUNICATIONS ACT

Section 601—Findings

Details the findings of the Congress that cable is engaged in interstate commerce; that the provision of broadband telecommunications is of concern to all governmental entities, Federal, State, and local; and that a uniform national policy for broadband telecommunications can serve to eliminate and prevent conflicting and counterproductive regulations so that cable can be a competitive medium which will serve the needs and interests of the public. The committee feels that cable is of concern to all levels of government, and that jurisdiction should be apportioned according to the other provisions in the bill.

Section 602—Purposes

Contains the purposes of this proposed legislation which are to establish a national policy for, and to encourage a competitive environment for cable; to establish guidelines for the exercise of Federal, State, and local regulatory authority; to allow cable to compete in the marketplace with other providers of telecommunications services; and to eliminate Government regulation. The committee specifically recognizes that all levels of government have a role to play with guidelines established by the act. Also, the committee believes that free and open marketplace competition in the provision of cable can only develop if the cable industry is free of unnecessary and burdensome restrictions which place cable at a competitive disadvantage with other providers of similar services.

Section 603—Definitions

Contains the definitions of the terms used in proposed title VI, and while most are self-explanatory, the Committee believes that some need further explanation.

"Basic service" is defined as the lowest cost tier, other than a tier offered at a discounted fee, of service which is available to subscribers for a fee and which includes the provision of retransmission of local broadcast signals, public, educational, and governmental programing,

and any other programing service offered by a cable operator as part of the tier, and specified in the franchise agreement as part of basic service.

The phrase "other than a tier offered at a discounted fee" is intended to refer to service tiers made available for special circumstances, including senior citizen discount service.

Therefore, the term basic service, absent discount rates, will generally be limited to the lowest cost tier of service which contains the fundamental service offered by cable systems—local broadcast signals (those available over-the-air in the community), public, educational, and governmental programing, and any other programing service offered by the cable operator as part of the tier. The term basic service means the lowestpriced tier containing the requisite elements for which the franchising authority may or may not choose to regulate the rates. Rates for other, higher priced tiers of service may not be regulated, even though they may contain local broadcast signals, public, educational, and governmental programing, and other programing services, or are labeled basic service by the franchising authority.

The committee does not intend to require franchising authorities and cable operators to tier or retier their program offerings to meet this definition. Such decisions are properly made as part of the franchising, or refranchising process, and S. 66 does not interfere with those decisions. The term basic service is defined simply to indicate the scope of the franchisor's authority over rate regulation.

"Basic telephone service" is defined as telecommunications service provided through a switched network capable of providing two-way voice grade communications that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to title II of this act. Basic telephone service refers only to local, or intraexchange, voice telephone service which the public normally receives under a tariff from a telephone company.

"Cable service" is defined as one-way programing on a per-channel, per-program, or other basis, but it does not include basic service. The committee intends this term to include all one-way programing services, whether available free, or on a pay basis, to the subscriber. Thus, such video offerings as ESPN, BET, HBO, Showtime, the Movie Channel, Escapade, Bravo, CNN, etc., would all be considered cable services.

The term does not include basic service since this definition relates directly to the rate regulation provisions in section 607, and the Committee intends to separately define what services may or may not be regulated.

A "cable system" is defined in the bill as a primary control center used to receive and retransmit, or to originate broadband telecommunications service over coaxial cable or cables to a subscriber. There are three exemptions that are specifically not to be considered as a cable system for purposes of proposed title VI.

The first exemption is for a facility that only retransmits television signals of television stations.

The second exemption is for a facility or combination of facilities that serves only subscribers in one or more multiple of unit dwellings under common ownership, control, or management. These are the so-

called private cable systems, or master antenna television (MATV) or satellite master antenna television (SMATV) systems.

The private cable system utilizes the same technology and satellite reception capabilities as the larger municipally franchised cable system. MATV receives its signals over-the-air, while SMATV receives its signals via satellite transmission. However, the private cable system serves only residential apartment, cooperative, condominium, and any other multiple unit dwelling complexes. Hence, under existing law, the private cable system is not subject to State and local regulation.

Private cable systems are recognized as a part of the broadband telecommunications network in this country under existing FCC policy. It is the intention of this legislation to further define FCC policy. Therefore, private cable systems continue to remain subject to the exclusive jurisdiction of the FCC.

The third exemption is for common carriers subject to the provisions of title II of the Communications Act of 1934, whenever such carrier transmits broadband telecommunications services other than basic service or cable service.

"Franchise" means a permit, license, ordinance, resolution, right-of-way, contract, certificate, agreement, or similar authorization issued by a franchising authority which authorizes the provision of basic service, cable service, or telecommunications service by a cable operator.

"Telecommunications" refers to transmission of information by electromagnetic means. This includes all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of information) essential to such transmission.

"Telecommunications service" does not include basic service or cable service since this definition relates directly to the rate regulation provisions in section 607, and the committee intends to separately define what services may or may not be regulated.

Section 604—Statement of authority

Provides that the FCC shall have jurisdiction over broadened telecommunications in accordance with this title and with other laws. The committee intends that the FCC should retain its current and traditional jurisdiction over broadband telecommunications as well as assume the new grants of jurisdiction under the act. The committee wants to make clear, however, that this grant of jurisdictional authority is not to be construed as an affirmative grant of regulatory power to be exercised by the FCC. On the contrary, the committee expects that the FCC will exercise even less regulatory power over cable systems than it presently does.

Also in section 604 is a statutory grant of authority to States, subdivisions, and so forth, to award one or more cable franchises. This is the first instance of the Congress recognizing the right of a State or local governmental entity to award cable franchises to serve its jurisdiction. Although this provision has no effect on the antitrust laws, the committee wishes to make it clear that franchising authorities have a legitimate role in the provision of cable telecommunications to the public.

Finally, section 604 provides that no cable system shall provide basic service or cable service without a cable franchise. However, that provision does not apply to any cable system in operation on April 21,

1983, the date that S. 66 was favorably reported by the committee. This exception is meant to cover those instances where cable systems are providing such service today without a franchise and with the approval of State or local government; for example, through a permit.

Section 605—Ownership or control of cable systems

Provides that no State or local entity shall have the authority to prohibit the ownership of cable systems by any person by reason of that person's ownership of any other media interests. Those media interests include broadcast (radio or television), cable, newspaper, programing service, or other printed or electronic information service. The intent of the committee is to prevent any State or local cross-ownership or multiple ownership restrictions. The committee believes in free and open competition in the marketplace and in the elimination of and prevention of artificial barriers to entry by any such person.

This provision reflects the competitive nature of the cable industry and the entertainment industry. During the hearings on S. 2172 and S. 66 before the Communications Subcommittee, numerous witnesses described the increasing competition within the cable industry, demonstrating a lack of concentrated power in any single company, or even a group of companies.

In addition, the cable industry faces strong and increasing competition in the provision of services from a variety of other sources. These sources include subscription television (STV), multi-point distribution service (MDS), over-the-air broadcasting (radio and TV), satellite master antenna television systems (SMATV), microwave master antenna television systems (MATV), video cassettes and discs, movie theatres, and proposed services including low power television (LPTV), direct broadcast satellites (DBS), and multi-channel MDS. Detailed studies submitted during the hearings on S. 2172 and S. 66 support the conclusion that the video market is indeed competitive. Browne, Bortz, and Coddington, "The Impact of Competitive Distribution Technologies on Cable Television"; Shooshan and Jackson, "Cable Television: The Monopoly Myth and Competitive Reality"; Federal Communications Commission Office of Plan and Policy, Staff Report on Policies for Regulation of Direct Broadcast Satellite (1980); Federal Communications Commission, Office of Plan and Policy, Staff Report on FCC Policy on Cable Ownership (1981); Comments of the Department of Justice in General Docket No. 80-603, Direct Broadcast Satellites (1981); James K. Parker, CBS Inc., "Supplementary Statement (1983).

The committee intends that any proceedings or pending orders which may be ongoing as of the date of enactment, and which are based upon any law, regulation or policy concerning cable ownership which is in conflict with the provisions of this bill shall be terminated without prejudice to the person against whom the proceeding was originally instituted.

Section 605 also gives the FCC the authority to conduct inquiries about foreign ownership of cable in this country in order to ensure fair and equitable treatment of U.S. cable enterprises seeking access to foreign markets. The FCC shall submit any information it obtains of trade barriers to the U.S. Trade Representative.

Finally, section 605 provides that the prohibition of regulation of ownership of cable systems by any person is intended to apply to the

ability of a State, subdivision, and so forth, to acquire or own a cable system. A State, subdivision, and so forth, is free to do so.

There are, however, several qualifications to municipal acquisition of ownership. First, in any case in which a State, subdivision, and so forth, acquires an ownership interest in any cable system, such interest must be acquired at not less than fair market value. According to generally accepted economic principles, fair marekt value includes the value of the cable system as an ongoing business. The purpose of this requirement is to preclude the inequitable acquisition of the property and business of a cable operator by a State, subdivision, and so forth, at the end of the franchise term at a price far below the value of the system. In the event that the State, subdivision, and so forth, and the cable operator are unable to agree upon any fair market value, the matter of determining fair market value shall be submitted to binding arbitration.

Second, in the event of termination of the franchise due to a material breach by the cable operator, the State, subdivision, and so forth, must give notice, reasonable opportunity to remedy, and other due process such as a timely hearing with the right to call witnesses and present evidence by the cable operator. Any termination because of a breach shall be subject to de novo review by a court of competent jurisdiction.

Third, in any case in which a State, subdivision, and so forth, has or acquires any ownership interest, it is prohibited from owning or controlling, directly or indirectly, the content of any of the programming provided on such cable system except with respect to governmental access channels. The committee believes that Government control of the content of the programing on a Government-owned cable system is patently inconsistent with first amendment principles. No government, Federal, State, or local, should have the power or the ability to control news and information disseminated over any electronic medium. Therefore, the State, and so forth, would have to establish an independent board or separate management company, and such board or company shall not include any State or local office holder. The committee believes that government officials should not participate in decisionmaking on matters affecting program content. However, appointed officials who are uniquely qualified to ensure that a publicly owned system serves its intended purpose can serve on such boards. For instance, in Massachusetts, education officials are permitted to sit on such boards, particularly on decisions affecting educational networks. Such examples would seem to be in the public interest.

Finally, States may establish rules to govern municipal ownership that are consistent with this section.

Section 606—Access channels

Provides that a cable operator may offer in a franchise to dedicate or set aside channels for public, educational, governmental, or other channel users. In addition, section 613 provides that a franchising authority may require, as part of the request for proposals (RFP), channels for governmental access.

The franchising authority and the cable operator may jointly establish rules and procedures for the use of the access channels other than for the rates charged to channel programers for that use.

In addition, until there is demand for each channel full time, access channel programing may be combined by the cable operator on one or more channels, and if time is available, the operator may use the channels for other services. The committee recognizes that there are instances today when access channels are not in use, and yet, the cable operator must leave those channels blank. With this provision, the subscriber will benefit from the widest possible selection of programming on an uninterrupted basis.

The committee reluctantly, and with some misgivings, has provided for this scheme of offering of access on the theory that cable today is unique in its ability to provide a single outlet for diverse sources of programing to the community. Therefore, cable has a special obligation to provide the capability for these diverse sources to reach the public. When new and competitive alternatives for programing services become available, this special obligation should cease.

Section 607—Regulation of rates and services

Provides that States, subdivisions, and so forth, are authorized to regulate the rates charged by cable operators to subscribers for basic service, for equipment necessary for the receipt of basic service, including converters and equipment related to installation, and for equipment which facilitates the reception of basic service by hearing impaired individuals.

Any regulated rate may be increased annually by the cable operator by up to 5 percent or the regional consumer price index (CPI) for the preceding 12 months, whichever is greater. The ability to increase rates shall be cumulative for not more than 3 successive years. Automatic increases may not apply to existing franchises which have a fixed rate for basic service for a specified period. The cable operator may also automatically increase rates for basic service beyond the 5 percent or CPI if he requests the increase and it is not acted upon by the franchising authority within 90 days.

Section 607 further provides that rates for basic service shall not be regulated when the cable system is located within the grade B contour of not less than four television signals of which there shall be one affiliate of each of the three major television networks; that is, ABC, CBS, and NBC. The television signals must be full power stations, not low power stations, and they may be either commercial or noncommercial in nature.

Cable franchises which are in existence on the date of enactment and which meet the test for rate deregulation; that is, four television signals are present, shall have the deregulation of basic rates deferred for a period of 5 years or for a period equal to one-half of the remaining term of the franchise, whichever is greater. However, the committee does not intend that such deferral would be continued in any renewal or extension in the event that there were less than 5 years remaining before the franchise expired.

Since the committee clearly favors an approach where competition and marketplace forces would determine and control rates, this legislation merely allows rate regulation under certain conditions; it does not mandate it. The committee is heartened by recent instances of States, franchising authorities, and so forth, using their regulatory authority to deregulate rates for basic service, and encourages others to follow the same approach.

Section 607(e) states that no entity, Federal, State, or local, may regulate or restrict the rates for reconnection, additional sets to the same subscriber, or sales of equipment. These are the types of services and activities which are better controlled through normal marketplace competition.

Section 607 also provides that no entity, Federal, State, or local, may regulate or restrict the provision of or nature of cable services offered over a cable system except as provided in section 613. It is well settled that the FCC presently has jurisdiction over the regulation of pay-per-program services, even though it has declined to exercise its regulatory authority. *Brookhaven Cable TV, Inc.* v. *Kelly*, 573 F. 2d 765 (2d Cir. 1978). The committee wishes to make that programing services cannot be regulated under S. 66 without regard to whether the program is paid for by an advertiser or by a subscriber.

Section 607 provides that no entity, Federal, State, or local, may regulate or restrict the provision of or nature of telecommunications services offered over a cable system, except with respect to the provision of basic telephone service, and except as provided in section 613. It is the intent of the committee that no entity should regulate these facilities or services as to rates, terms, conditions, content, or nature. The development of telecommunications services, which is intended to be as broad a term as possible, and their availability over cable systems is in the early stage of development. Such services as electronic banking, security services, electronic shopping, electronic Yellow Pages, videotex and teletext, data transmissions, and video conferencing, are rapidly becoming available to the American public through a variety of sources. However, only a few cable systems have the technical capability to provide for these interactive services.

The committee firmly believes in encouraging competition and in not imposing any regulation where marketplace forces are better able to insure innovation, diversity, and efficiency. Whether or not such telecommunications services can or will be provided on an unregulated basis in the future over other electromagnetic means, it is the intent of this commitee that these services, when offered over a cable system, shall be free of any governmental regulation or restriction.

An exemption from this total preclusion from regulation is the provision of basic voice telephone service. This exemption is not intended to either create new regulatory authority nor to extend current regulatory authority over basic voice telephone service. Since the provision of basic voice telephone service by local telephone companies will, in all likelihood, continue to be regulated, allowing cable systems to provide the same service free of regulation would impose disparate regulatory burdens on telephone companies. It is thus the belief of the committee that if a cable system is used for the provision of basic voice telephone service, it would be subject to, and not exempt from, regulation applicable to any carrier as required by Federal or State agencies responsible for the regulation of telephone companies.

The basic telephone service definition and this exception does not mean that a cable system is prohibited from offering the traditional universal, switched voice telephone service. In fact, such new entry is in the public interest.

The committee also wishes to make clear that broadband telecommunications, enhanced networks, or services transmitted over such

networks, when offered over a cable system, would not be subject to regulation. It is also clear that this basic telephone service exception in no way overturns other existing FCC decisions in the area of title II deregulation. For example, the exception would not subject customer provided equipment to regulation even if, like a PBX, it was capable of performing switching functions. In other words, a customer's ownership or operation of such equipment would not subject a cable system to regulation under this exception.

There are also other types of telephone-like services that do not fit within the definition of basic telephone service and are thus not subject to regulation under this provision. Since private line services are not switched, they can be provided by cable systems without regulation. In adition, it is clear that the FCC continues to have exclusive jurisdiction over local exchange access for interstate communications, and that State or local regulators cannot prevent cable's distribution of interstate communications.

It bears reemphasizing that this bill does not create any new jurisdictional authority at the Federal, State, or local level. The Committee's objective is the same for carrier-like services as it is for cable services, namely to encourage deregulation, not to create regulation. The committee intends to encourage the entry of cable into the marketplace as a provider of telecommunications services, a marketplace that cable is just now beginning to enter and in which it has no market power.

Finally, at the executive session on April 21, 1983, concerns were expressed about how telephone companies would compete with cable systems in the provision of local data services. S. 66 provides that cable systems would not be subject to regulation when they provide such services. Regulation of telephone companies providing such services, however, is not addressed in this bill, and such regulation would continue, subject to State oversight.

The committee will attempt to address how telephone companies compete in the provision of local data services in this bill. One proposal advanced during the executive session, was an amendment that would allow state regulators to deregulate those services if they were found effectively competitive. This proposal will be explored, along with other possible approaches prior to consideration by the full Senate.

Lastly, section 607 makes it clear that this bill does not preclude or prohibit franchising authorities and cable operators from specifying, in a franchise agreement or renewal thereof, that certain cable services shall not be provided, or shall be provided subject to conditions, if such cable services are obscene or otherwise unprotected by the U.S. Constitution. The standards for making such determinations are established and applied by the courts. Thus, for example, *Miller* v. *California*, 413 U.S. 15 (1973), sets forth the current test for obscenity and relies upon the judicial system to make the factual findings on such matters as contemporary community standards that are essential for determining whether particular matter is obscene. Similarly, with respect to another type of unprotected speech—child pornography—the case of *New York* v. *Ferber*, 102 S. Ct. 3348 (1982), establishes that this category of unprotected speech must also be adequately and precisely defined. This section would apply to future U.S. Supreme Court

decisions which may find that other kinds of speech are unprotected under the Constitution.

This provision of the bill is not intended to permit municipal officials or cable operators to substitute their own concepts of obscene or unprotected speech for judicially determined standards. Nor does it permit the imposition of sanctions or the determination of a breach of the franchise in the absence of a judicial determination that particular speech was obscene or otherwise unprotected by the Constitution. Lastly, this section is not intended to alter, change, or affect constitutional requirements which limit prior restraints on speech and provide for prompt judicial determination of the validity of limitations on speech. *Freedman* v. *Maryland*, 380 U.S. 51 (1965).

Section 608—Franchise fees

Provides that cable operators may be required in a franchise to pay to a State, franchising authority, et cetera, a franchise fee for the privilege of holding a franchise. No franchise fee shall exceed 5 percentage of the cable operator's annual gross revenues that are derived from the operation of that particular system. Today, the FCC places a ceiling on franchise fes of 3 percent of the operator's annual gross revenues, with a possible waiver of up to 5 percent under appropriate circumstances.

The committee feels it is necessary to impose such a franchise fee ceiling because the committee is concerned that, without a check on such fees, local governments may be tempted to solve their fiscal problems by what would amount to a discriminatory tax not levied on cable's competitors. This would clearly place cable operators at a competitive disadvantage and thus be detrimental to the public. The 5 percent ceiling will permit State or local governments to recover revenues sufficient to cover the cost of cable-related expenses; it will encourage the continued growth of cable by eliminating excessive fee demands; and it will permit the entry of new cable entrepreneurs.

This section shall not be construed as limiting fees in existing franchises which are paid by cable operators to entities for the purpose of facilitating the use of public, educational, or governmental access channels. Such fees could include contributions, grants, and scholarships which support the development of or provision of access programing.

For purposes of section 608, a franchise fee shall include any tax, fee, or assessment of any kind imposed by a franchising authority or governmental authority. The term assessment, however, shall not include bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages or similar requirements which are incidental to the enforcement of the franchising agreement.

The cable operator may pass through to his subscribers the cost of any increase in a franchise fee, and he may designate the total franchise fee as a separate item on the subscribers' bills.

Finally, this section does not require a cable operator to renegotiate the provisions of an existing franchise. However, franchise fees, as defined in the bill, which are contained in existing franchises, which are in excess of the 5 percent ceiling, and which do not otherwise meet the exception in section 608, would have to be brought into compliance with this standard.

Section 609—Renewals and extensions

Establishes a renewal expectancy for cable operators. Under this section, the franchising authority shall grant a renewal or other extension unless it finds that: (1) The operator has not substantially complied with the material terms of the franchise and with applicable law, or has been convicted of a felony; (2) there has been a material change in the legal, technical, or financial qualifications of the operator that would substantially impair continued service; (3) the facilities to be provided, including those for governmental access, are unreasonable in light of the community need for and cost of the facilities; (4) the signal delivered by the operator has not generally met technical standards established by the FCC; or (5) the proposals in the renewal application are otherwise unreasonable.

The franchisor is given complete control over the application of the renewal tests, compared to the Federal Government's complete control over the renewal of radio and television broadcast station licenses. However, the committee intends that the same renewal expectancy for broadcasters, which the Congress has recognized in proposed legislation (S. 55), should apply as well to cable operators. Moreover, this concept of a renewal expectancy for broadcasters was recently sanctioned by the courts. *Central Florida Enterprises, Inc.* v. *Federal Communications Commission*, No. 81–1795 (D.C. Cir. July 13, 1982).

The committee's interest is not in protecting the cable operator, but in protecting the consumer/subscriber. The committee believes that this provision, establishing a legitimate renewal expectancy, will benefit the subscriber by encouraging greater investment by the cable operator in the cable system at the time of the grant of the initial franchise and during the franchise term. Moreover, because cost of construction of a cable system today has escalated into the millions of dollars, and because it is now typically between 8 and 10 years into the franchise term before the operator begins to show a profit, this renewal expectancy should enhance the ability of cable operators to obtain financing for construction of the system.

It should be noted that this renewal expectancy is not intended to overturn the status quo as set forth in *Chronicle Publishing Co.* v. *Commissioner of Internal Revenue*, 67 T.C. No. 80, docket 8550–74 (March 21, 1977), which allows the depreciation of cable franchises for tax purposes.

One part of the renewal test is that the facilities to be provided are reasonable in light of the community need for and cost of the facilities. This is meant both to insure that the community's needs are met and to encourage cable operators to rebuild and upgrade their systems.

The committee believes that consideration of the community need for cable facilities could include the reasonable number of residences to be passed by the cable operator within the franchise community. Those needs, if considered, should be weighed against the costs of extension of service and the impact on subscriber rates.

The committee is cognizant of those living in high cost, urban core or rural areas, who are not presently served by and which could not alone support a cable system. The time of franchise renewal often represents the sole opportunity for the franchising authority to

reevaluate the needs of its franchise community and to assess the proposals of the cable operator toward those needs.

To elaborate further on the concept of a renewal expectancy, it means that if the franchising authority finds that the cable operator has met the five-prong test for renewal, it would have to grant such renewal or extension. The franchising authority must demonstrate that the renewal test has not been satisfied. This section establishes procedures for the renewal process which will facilitate the operation of this expectancy as follows: the operator must file at least 24 months before expiration; the franchisor must consider the application and conduct any proceedings within 90 days; the franchisor may not request, accept, or consider any other franchise application until it has ruled on the incumbent's application; and the franchisor shall negotiate in good faith, and shall make a final decision on granting or denying the application within 12 months.

Finally, section 609 provides that if the franchising authority either fails to timely act on, or denies the renewal, the renewal applicant may obtain a de novo review in any court of competent jurisdiction.

Section 610—Unauthorized interception or reception

Provides that no person or Government authority shall intercept or receive broadband telecommunications unless specifically authorized to do so by a cable operator, channel programer, or originator of broadband telecommunications or as may otherwise be specifically authorized by Federal law. In order to safeguard this right to privacy and security, the bill provides that broadband telecommunications shall be deemed to be a "wire communication" within the meaning of section 2510 (1) of title 18 of the United States Code and under the jurisdiction of the Department of Justice. The FCC estimates that approximately 10 percent of all cable viewers, or about 3 million households across the country, illegally receive cable services. For the first time, Congress recognizes the problem of unauthorized reception of broadband telecommunications, and this committee expects the Justice Department to protect the rights of the owners and originators of such broadhand services.

Section 611—Protection of subscriber privacy

Provides that no cable operator, channel programer, or originator of broadband telecommunications may use the cable system to collect personally identifiable information with respect to a cable subscriber except upon the prior written or electronic consent of that subscriber. Such written or electronic consent is not required if the collection of information is solely for billing purposes or monitoring of unauthorized cable receptions. Section 611 also provides that personal information obtained through the use of the cable system shall not be disclosed without the subscriber's prior written or electronic consent or upon a lawful court order.

The committee wishes to make clear that this is one of the sections which has the effect of being a Federal preemption, and no State or local regulation could be inconsistent with or supersede the provisions of this section.

This section reflects the committee's belief that the development of new and diversified services over interactive two-way cable systems should not impact adversely upon the privacy of the individual.

Section 611 is not intended to impose unreasonable requirements. The committee believes that the principal potential problem is the opportunity to monitor subscriber viewing habits and then disclose such personally identifiable information without prior consent.

The phrase "to collect personally identifiable information" covers the various ways that individuals can be identified, including name, address, and social security number. It is not intended to cover the electronic collection process used to produce aggregate records that are not individually identifiable. Such aggregate records indicate how groups of subscribers—such as males or residents of a certain neighborhood—use the system, and therefore pose no perceivable privacy threat to individuals. The group being measured must be large enough that one cannot ascertain the behavior of any particular person. In any proceeding under this section, the burden will be on the collector of information to show that the information is not personally identifiable. It is the committee's firm belief that the collector of the information must make good faith efforts to insure that a person's privacy is protected. Section 611 provides the necessary protection in this area.

Section 612—Criminal and civil liability

Provides that nothing in this title shall affect the criminal or civil liability of channel programers or cable operators pursuant to the law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws. The bill further provides that cable operators shall not be liable for any program carried on any public, educational, governmental, or other channel referred to in section 606, or for any program required by law to be carried.

Section 613—Programing, services, and facilities

Provides guidelines for determining what programing, services, equipment, and facilities can be required by a franchising authority in its request for franchise proposals or at renewal time, and which of the above may be offered by the cable operator. The franchising authority may require, as part of the initial franchise request for proposals, channel capacity for governmental access, construction of cable system facilities, and provision of cable-related equipment. However, the franchising authority is precluded from requiring services, facilities, equipment, or other items of value which are not related to the provision of broadband telecommunications service.

However, a cable operator may offer, but may not be required to provide, channel capacity for access uses and particular services. If that offer is reflected in the franchise agreement, the franchisor may enforce such an offer to provide services or facilities. The committee believes that this represents a fair balancing between the interests of the cable operator and the franchising authority in establishing those items that a cable operator can be required to provide and those that can only be offered in an arms-length situation.

In addition, the committee recognizes that in some existing franchise agreements, cable operators have agreed to provide services, facilities, equipment, and access channels beyond those which they could be required to provide under this section. The committee does not intend to void these agreements and has specifically grandfathered them in section 613(f) for the term of the franchise.

The committee recognizes that in certain circumstances it is appropriate to allow a cable operator to vary the provision of services, cable facilities, or other cable-related equipment stipulated in the initial franchise. Subsection (d) provides that, in the case of significantly changed circumstances, the cable operator would be permitted to replace or remove any service, facility, or cable-related equipment. The committee intends that "changed circumstances" shall include the following: (1) unavailability of a particular service, facility, or equipment; (2) significant increase in the cost of providing a particular service, facility, or equipment; (3) the quality of a particular service has deteriorated; and (4) changes in marketplace conditions which make the provision of a particular service, facility, or equipment not viable.

For example, should a programing service cease doing business, a commitment by a cable operator to provide such service would no longer be binding. On the other hand, the unavailability of certain equipment from a particular supplier, if other suppliers are available, does not absolve the operator. In that instance, the operator would have an obligation, if required under the franchise, to replace the facilities or equipment. Moreover, if significant increases in the overall cost to the cable operator of providing a service or facility occur; for example, the recent increase in cable copyright fees, the cable operator likewise would be permitted to remove or vary its intended offering. Finally, if insufficient marketplace demand develops for a particular service, independent of any action by the cable operator, the cable operator should be entitled to the relief established in this section.

In all cases, the committee intends that the significantly changed circumstances rule in subsection (d) would apply to those existing franchises which are subject to the grandfathering provision in subsection (f) as well as to franchises begun after the date of enactment of this bill. In addition, the right to remove or replace a particular service does not include the right to eliminate access channel requirements.

Section 614—No regulation as common carrier

Provides that no entity, Federal, State, or local, shall have authority to impose on a cable system regulation as a common carrier or a utility to the extent that such cable system provides broadband telecommunications service other than basic telephone service. This section does not affect, however, any access channel provisions in existing franchises.

In view of the increasing competition from such services as MDS, STV, DBS, LPTV, SMATV, and so forth, cable is neither a monopoly service nor is it an essential service, which are the two traditional tests of common carrier or utility status. The committee believes that as long as cable remains a competitive and nonessential service, it must be free to compete with other providers of broadband services without regulation as a common carrier or a utility.

This section is meant as a prohibition on regulation and is not meant to preclude cable systems from obtaining, for example, easement rights under a concept of general utility status. The obtaining of such rights would not constitute a regulatory burden that section 614 is intended to prohibit.

SECTION 2—EXCLUSIVE JURISDICTION

Section 2 provides that, unless otherwise expressly provided in title VI of the Communications Act of 1934, the Federal Government shall have exclusive jurisdiction over broadband telecommunications regarding matters covered by title VI. This section further provides that any law of any State, subdivision, et cetera, existing on the effective date of title VI, which is in conflict with the exclusive jurisdiction of the Federal Government, shall be deemed superseded, null and void, and of no effect 6 months after the date of enactment.

Today cable faces major competition from such sources as MDS, MATV, SMATV, DBS, STV, television, radio, movie screens, videocassettes and videodiscs, LPTV, and other media. These services are by and large free from State and local intrusion into their business affairs. Thus the committee believes that there is no need for government at any level to continue to or begin to unduly regulate or otherwise impose unnecessary restrictions on the cable industry.

The committee believes that the increasingly competitive marketplace demands a corresponding alleviation of and elimination of governmental regulations on cable. New title VI establishes appropriate policy limitations on Federal, State and local regulation. Section 2 is intended to insure that State and local authorities may not implement regulations or laws in a franchise agreement which would be inconsistent with congressional policy in title VI.

State and local governments are given authority in a number of sections in this bill. The committee wishes to make clear that if they exercise that authority (such as rate regulation), such exercise must be consistent with the provisions of this title.

The committee intends that the 6-month delay contained in subsection (b) affects only those provisions in the act which deal with jurisdiction and are in conflict with the exclusive grant of Federal authority. Provisions of the act, such as section 605, which prohibit the exercise of authority by States, franchising authorities, et cetera, would, of course, be effective immediately upon the date of enactment. A 6-month delay is unnecessary in these instances and would clearly not be appropriate.

Finally, section 2 provides that States, franchising authorities, et cetera, may exercise jurisdiction over matters which are of strictly local concern and which are necessary for reasons of public health, safety, and welfare, including the terms and conditions for the granting of a franchise, the construction and operation of a cable system, and the enforcement and administration of a franchise.

Examples included under the heading of terms and conditions for the grant of a franchise include: duration of the franchise term; definition of the service area; and rules and procedures for consideration of initial applications and for initial selection of the cable operator. Examples included under the heading of the construction and operation of a cable system include: Construction and installation of cable system facilities on and removal of those facilities from the public rights-of-way and private property; extension of service; and safety standards. Finally, examples included under the heading of the enforcement and administration of a franchise include: Reporting

requirements; periodic evaluation of performance; and bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages, and fines.

SECTION 3—NEW AND ADDITIONAL SERVICES

Section 3 adds a new section to the 1934 act which provides that, consistent with sound spectrum management, the FCC shall, to the maximum feasible extent, encourage the introduction of new and additional services by new applicants, existing licensees, or others. It is further provided that such services shall be presumed to be in the public interest whenever the FCC finds that they are technically feasible without causing significant technical degradation to, or interference with, radio transmissions by other licensees.

If a competitive telecommunications marketplace is to flourish, ease of entry is essential. In the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35), Congress helped ease entry for those who wish to offer services by allowing the FCC to institute a random selection procedure for new licenses. This legislation is a complement to the current law. Its purpose is to foster new and additional services. In general, all potential providers of service should be allowed to propose and then offer new and additional services, subject to the Commission's current and continued authority to determine that the offering of such services by those potential providers would serve the public interest. The regulatory process should not act as a barrier to those who wish to provide new and additional services.

The committee believes that the forces of competition and technology will bring many new services to consumers, and cable is one of these services. In the past, the FCC has often hampered the development of new services. For example, the FCC imposed stringent regulations on cable, pay cable, and subscription television which delayed the introduction of these services in many areas for years. The committee believes that the development of new technologies and the efforts of competitors seeking to respond to consumer demands will bring more services to the public than will administrative regulations. Hence, this section directs the FCC to encourage the development of such services.

These principles are explained in section 3 of the bill. The first sentence is a policy statement that, consistent with sound spectrum management, the FCC shall encourage the introduction of new and additional services by all potential providers, including new applicants, existing licensees, or other persons.

The second sentence states that in any proceeding in which new or additional services are proposed, such services shall be presumed to be in the public interest if the FCC finds that they are technically feasible without causing significant technical degradation to or interference with radio transmissions by other licensees. Even if the FCC finds that such technical degradation or interference does occur, it is possible that the FCC may still find that authorizing such new or additional service is consistent with sound spectrum management, and is otherwise in the public interest. Conversely, new or additional services may be technically feasible but not be in the public interest because they are inconsistent with sound spectrum management.

The presumption is rebuttable. If the presumption is rebutted by an outside party, the FCC has the authority to make a finding as to whether these services are in the public interest. If the presumption is not rebutted, the services are deemed to be in the public interest. A finding by the FCC that this new or additional service does not soundly and efficiently use the spectrum will conclusively rebut the presumption, and such service will then not be in the public interest.

An example of an argument that could be used to rebut the presumption is that there is another service that would make better use of this particular spectrum space. On the other hand, a claim that the new or additional service will provide competition that will take revenues from another service, either existing or proposed, will not be a valid rebuttal.

As a point of clarification, this provision is not directed to who should offer a service or to any restrictions against the provision of a particular service by anyone. The Commission's authority continues in these areas. This section is directed at the provision of services as a whole, not to individuals.

Furthermore, the mandate to encourage new services in section 3 is in no way intended to affect the Commission's responsibility to foster and maintain local services. Local services assure dissemination of information of local community interest and concern, and they provide a medium for local advertising. The committee intends that maintenance and development of local service remain an important factor in the allocation of spectrum.

Subsections (b) and (c) implement this policy by requiring that any petition or application to offer a new or additional service be acted upon by the FCC within 1 year of the filing thereof, or within 1 year of initiation of a proceeding by the FCC. It is not intended that these subsections create any new petition or application procedure, but only that such petitions or applications as may be filed for new classes of service pursuant to other sections of the act be ruled upon expeditiously, in order that the public not be deprived of new services through administrative delay.

SECTION 4—EFFECTIVE DATE

Provides that this act shall take effect on the date of enactment.

SECTION 5—REDESIGNATION

Provides that existing title VI of the Communications Act of 1934 is redesignated as title VII.

Rollcall Votes in Committee

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the committee provides the following record votes during its consideration of S. 66:

On motion of Senator Packwood to report S. 66, with an amendment in the nature of a substitute:

YEAS—15	NAYS—2
Mr. Packwood	Mr. Exon
Mr. Goldwater	Mr. Lautenberg
Mr. Danforth	
Mrs. Kassebaum [1]	
Mr. Pressler [1]	
Mr. Gorton	
Mr. Stevens [1]	
Mr. Kasten[1]	
Mr. Trible	
Mr. Hollings [1]	
Mr. Long	
Mr. Inouye	
Mr. Ford [1]	
Mr. Riegle [1]	
Mr. Heflin	

[1] By proxy.

CHANGE IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

THE COMMUNICATION ACT OF 1934

New Section 7 of that Act

NEW AND ADDITIONAL SERVICES

SEC. 7. (a) Consistent with sound spectrum management, the Commission shall, to the maximum feasible extent, encourage the introduction of new and additional services by new applicants, existing licensees, or other persons. In any proceding in which new or additional services are proposed, such services shall be presumed to be in the public interest whenever the Commission finds that such services are technically feasible without causing significant technical degradation to or interference with radio transmissions by other licensees.

(b) Any person may file with the Commission a petition to establish or an application to offer a new or additional service.

(c) The Commission must determine whether the new or additional service proposed in a petition or application is in the public interest within 1 year after such petition or application is filed. If the Commission initiates its own proceeding for a new or additional service, such proceeding must be completed within 12 months after it is initiated.

New Title VI of that Act

The reported bill would redesignate the current title VI of the Communications Act of 1934 (sections 601 through 609 inclusive) as

title VII of such Act (sections 701 through 709 respectively). It would then add a new title VI as follows:

TITLE VI—CABLE TELECOMMUNICATONS ACT

FINDINGS

SEC. 601. The Congress hereby finds that—

(1) cable systems are engaged in interstate commerce through the origination, transmission, distribution, and dissemination of broadband telecommuications services;

(2) the provision of broadband telecommunications is of concern to governmental entities; and

(3) a uniform national policy for broadhand telecommunications can serve to eliminate and prevent conflicting and counterproductive regulations in order to allow unhampered growth and development of cable as a competitive medium which will be responsive to and serve the needs and interests of the public.

PURPOSE

SEC. 602. The purposes of this title are to—

(1) establish a national policy concerning broadband telecommunications and to encourage a competitive environment for the growth and development of broadband telecommunications;

(2) establish guidelines for the exercise of Federal, State, and local regulatory authority;

(3) allow cable systems to be responsive to the needs and interests of the public on an equal basis without a competitive disadvantage with other providers of telecommunications services; and

(4) eliminate government regulation in order to prevent the imposition of an unnecessary economic burden on cable systems in their provision of service to the public.

DEFINITIONS

SEC. 603. For purposes of this title, the term—

(1) "basic service" means the lowest cost tier, other than a tier offered at a discounted fee, of service which is available to subscribers for a fee and which includes the provision of retransmission of local broadcast signals, public, educational, and governmental programing and any other programing service as offered by a cable operator as part of the tier, and specified in the franchise agreement as part of basic service, which is distributed by coaxial cable or any other closed transmission medium;

(2) "basic telephone service" means telecommunications service provided through a switched network capable of providing two-way voice grade communications that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to title II of this Act;

(3) "broadband telecommunications" means any receipt or transmission of electromagnetic signals, including basic service, cable service, and telecommunications service, over coaxial cable or any other closed transmission medium;

(4) "broadcasting" means telecommunications by radio intended to be received by the public, directly or by the intermediary of relay stations;

(5) "cable channel" or "channel" means that portion of the electromagnetic frequency spectrum used in a cable system for the propagation of an electromagnetic signal;

(6) "cable operator" or "cable system operator" means any person or persons, or an agent or employee thereof, that provides basic service, cable service, or telecommunications service over a cable system, or that directly or indirectly owns a significant interest in any cable system, or that otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(7) "cable service" means the provisions by a channel programer of one-way programing on a per channel, per program, or other basis which is distributed by coaxial cable or any other closed transmission medium, but such term shall not include basic service;

(8) "cable subscriber" means any person who receives or transmits electromagnetic signals distributed over a cable system;

(9) "cable system" means a facility or combination of facilities under the ownership or control of any person or persons, which consist of a primary control center used to receive and retransmit, or to originate broadband telecommunications service over one or more coaxial cables, or other closed transmission media, from the primary control center to a point of reception at the premises of a cable subscriber, but such term does not include: (A) a facility or combination of facilities that serves only to retransmit the television signals of television broadcast stations; (B) a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management; or (C) a common carrier subject to the provisions of title II of this Act whenever such carrier transmits broadband telecommunications services other than basic service or cable service;

(10) "channel programer" or "programer" means any person having an agreement to provide basic service or cable service to a cable system operator, or any person who leases, rents, or is otherwise authorized to use the facilities of a cable system for the provision of basic service or cable service, and such term shall include a cable system operator to the extent that such operator, or person or persons under common ownership or control with such operator, is engaged in the provision of such service;

(11) "closed transmission medium" or "closed transmission media" means media having the capacity to transmit electromagnetic signals over a common transmission path such as coaxial cable, optical fiber, wire, waveguide, or other such signal conductor or device;

(12) "franchise" means a permit, license, ordinance, resolution, right-of-way, contract, certificate, agreement, or similar authorization issued by a franchising authority which authorizes the provision of basic service, cable service, or telecommunications service by a cable operator;

(13) "franchising authority" means any State, political subdivision, or agency thereof, or any other governmental entity empowered to grant a franchise;

(14) "Grade B contour" means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

(15) "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols;

(16) "law" includes any regulation, rule, order, standard, policy, requirement, procedure, or restriction;

(17) "person" means an individual, partnership, association, joint stock company, trust, corporation or any governmental authority;

(18) "telecommunications" means the transmission of information by electromagnetic means, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission;

(19) "telecommunications service" means the offering of telecommunications facilities, or of telecommunications but such term shall not include basic service or cable service; and

(20) "United States" means the several States and territories, the District of Columbia, and the possessions of the United States.

STATEMENT OF AUTHORITY

SEC. 634. The provisions of this title shall apply as follows:

(1) The Commission shall have jurisdiction and exercise authority with respect to broadband telecommunications in accordance with the provisions of this title and other applicable provisions of law.

(2) Nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from awarding, in accordance with the provisions of this title, one or more cable franchises within its jurisdiction.

(3)(A) Except to the extent provided in paragraph (3), no cable system shall provide basic service or cable service without a cable franchise in compliance with this title.

(B) The provision of paragraph (A) shall not be applicable in the case of any cable system in operation on April 21, 1983.

OWNERSHIP OR CONTROL OF CABLE SYSTEMS

SEC. 605. (a) No State or political subdivision or agency thereof, or franchising authority, shall have the authority to prohibit, directly or indirectly, the ownership of cable systems by any person by reason of that person's ownership of any other media or other interests, including broadcast, cable, newspaper, programing service, or other printed or electronic information service.

(b)(1) Notwithstanding the provisions of subsection (a) of this section, for the purpose of ensuring fair and equitable treatment of United States cable enterprises seeking access to markets in a foreign

country, the Commission shall have authority to conduct inquiries applicable to foreign persons from that country seeking access to domestic markets in the United States in connection with the construction, ownership and operation of cable enterprises as to whether such United States cable enterprises are permitted fair and equitable access to such foreign markets.

(2) The Commission shall submit any information obtained through such inquiries to the United States Trade Representative to assist the Trade Representative in his identification and analysis of acts, policies or practices which constitute significant barriers to, or distortions of, United States exports of services.

(3) For purposes of this subsection, the term 'foreign persons' includes any individual who is not a citizen of the United States, any subsidiary (although established under the laws of the United States or any State thereof) of a corporation or other business entity which was established under the laws of a foreign country, any corporation or other business entity established under the laws of a foreign country, or any corporation or other business entity established under the laws of the United States or any State thereof, if 25 percent or more of the capital stock or equivalent ownership is owned or controlled by an individual who is not a citizen of the United States or by a corporation or other business entity established under the laws of a foreign country, or any subsidiary of a corporation or other business entity established under the laws of a foreign country.

(c) (1) Notwithstanding the provisions of subsection (a) of this section, a State or political subdivision or agency thereof, or franchising authority, may not acquire an ownership interest in any cable system pursuant to a buy-back provision of a franchise or require a sale of a cable system to any other person pursuant to a franchise, upon the expiration of the franchise, unless such State, subdivision, agency, authority, or person acquires such ownership or interest at not less than fair market value based upon the ongoing business value of the system. In the event that the cable operator and a State or political subdivision or agency thereof, or franchising authority, are unable to agree upon any such fair market value, then the matter of determining fair market value shall be submitted to binding arbitration. For purposes of arbitration, each of the affected parties shall select one arbitrator and the two arbitrators so selected shall chose a third arbitrator.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the event of termination for cause of a franchise due to a material breach, a State or political subdivision or agency thereof, or franchising authority, may acquire an ownership interest in such cable system but only upon written notice of the breach, reasonable opportunity to remedy the breach, and other due process. Any such termination shall be subject to de novo review by a court of competent jurisdiction.

(d) In any case in which any such State, subdivision, agency, or authority has or acquires any such ownership or interest, such State, subdivision, agency, or authority shall, in no case, own or control, directly or indirectly, the content of any of the programing on such cable system, except for programing on government access channels, unless such State or political subdivision or agency thereof, or fran-

chising authority, establishes an independent board or a separate management company. Such board or company shall not include any State or local office holder.

ACCESS CHANNELS

SEC. 606. (a) A cable system operator may offer in a franchise to dedicate or set aside channels for public, educational, governmental or other channel users.

(b) The franchising authority and the cable operator may establish rules and procedures for the use of the channels set aside or dedicated pursuant to this section.

(c) Until such time as there is demand for each channel full time for its designated use, public, educational, governmental, or other channel programing may be combined by the cable system operator on one or more channels, and to the extent time is available on such channels, they may be used by the cable system operator for the provision of other services.

REGULATION OF RATES AND SERVICES

SEC. 607. (a) Nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from establishing, fixing, or otherwise restricting the rates charged by cable operators—

(1) to subscribers for the receipt of basic service,

(2) to subscribers for equipment necessary for the receipt of basic service, and

(3) to subscribers for equipment which facilitates the reception of basic service by hearing impaired individuals.

(b)(1) Any rate regulated pursuant to this section may be increased annually at the discretion of the cable operator by an amount not to exceed 5 percent of the existing rate or the regional consumer price index for the preceding 12 months, whichever is greater, upon 30 days prior notice. The ability to affect such increases shall be cumulative for not more than 3 successive years.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, nothing in this title shall be construed as prohibibting any State or political subdivision or agency thereof, or franchising authority, from providing that such automatic increases shall not apply to a franchise which is in existence on the date of the enactment of the Cable Telecommunications Act of 1983 and which provides for a fixed rate for basic service over a specific period.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, a cable system operator may automatically increase basic service rates which exceed the basic rates allowed pursuant to subsection (a) or (b) of this section if—

(1) such operator has requested the increase in rates; and

(2) the request is not acted on within 90 days following the date of its receipt.

(d)(1) Notwithstanding the provisions of subsection (a) of this section, the authority to establish, fix, or otherwise restrict the rates charged to subscribers for the provision of basic services set forth in subsection (a) of this section, except to the extent otherwise provided in paragraph (2) of this subsection, shall not be applicable in any

case where the cable system is located within the Grade B contour of not less than four television signals of which there shall be one affiliate of each of the three major television networks.

(2) The provisions of paragraph (1) of this subsection shall not be applicable in the case of any franchise in existence prior to the date of the enactment of the Cable Telecommunications Act of 1983, if the rates charged to subscribers for the provision of basic services are subject to regulation or are restricted by any State or political subdivision or agency thereof, or any franchising authority. The provisions of this paragraph relating to existing rate regulations of basic service shall be applicable for a period of five years following the date of the enactment of such Act, or for a period equal to one-half of the period of the remaining terms of such franchise, as of the date of the enactment of such Act, whichever is greater. The provisions of paragraph (1) shall be applicablet o any renewal or other extension of any such franchise.

(e) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the rates for reconnection, additional sets to the same subscriber, or sales of equipment.

(f) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of cable services offered over a cable system except as provided in section 613 of this Act.

(g) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of telecommunications services offered over a cable system, except with respect to the provision of basic telephone service, and except as provided in section 613 of this Act.

(h) Nothing in this Act shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise agreement or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the United States Constitution.

FRANCHISE FEES

SEC. 608. (a) Cable operators may be required in a franchise to pay to a State or political subdivision or agency thereof, or franchising authority, a franchise fee.

(b)(1) No franchise fee paid by a cable system operator for the privilege of holding a franchise, shall exceed an annual aggregate of 5 percent of such cable operator's gross revenue derived from the operation of the cable system which is the subject of the franchise.

(2) Nothing in this section shall be construed as limiting fees required by a franchise in effect on the date of enactment of the Cable Telecommunications Act of 1983 to be paid directly or indirectly to entities established for the purpose of facilitating the use of channels set aside for public, educational, or governmental use.

(c) Any cable system operator may pass the cost of any increase in a franchise fee through to subscribers, and may designate the total franchise fee as a separate item on the subscribers' bills.

(d) For the purposes of this section—

(1) "franchise fee" shall include any tax, fee or assessment of any kind imposed by a franchising authority or governmental authority on a cable system operator or cable subscriber because of their status as such; and

(2) "assessment" shall not include bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages or similar requirements which are incidental to the enforcement of the franchising agreement.

(e) Nothing in this section shall be deemed to require a cable operator to renegotiate the provisions of an existing franchise.

RENEWALS AND EXTENSIONS

SEC. 609. (a) In any case in which a cable system operator submits an application to the franchising authority for the renewal or other extension of such operator's franchise authorization, the franchising authority shall grant such renewal or other extension unless it finds that—

(1) the cable system operator has not substantially complied with the material terms of such franchise and with applicable law, or has been convicted of a felony;

(2) there has been a material change in the legal, technical, or financial qualifications of the cable system operator that would substantially impair the continued provision of service by such operator;

(3) the facilities to be provided by such operator, including facilities for governmental access, are unreasonable in light of the community need for and cost of such facilities;

(4) the signal delivered by the cable system within the control of the cable system operator, has not generally met technical standards as established by the Commission; or

(5) the proposals contained in the renewal application are otherwise unreasonable.

(b) A cable system operator must file for renewal at least 24 months before the expiration of the franchise. The franchising authority—

(1) must consider the renewal within 90 days of submission of the application and conduct any proceedings necessary to adequately consider the application; and

(2) may not request, accept, or consider any other franchise application until the incumbent franchisee application is denied or approved.

(c) A cable system operator with a franchise which shall expire within 24 months after the date of enactment of the Cable Telecommunications Act of 1983, shall be in compliance with subsection (b) if he files an application for renewal within 60 days after such date of enactment.

(d) The franchising authority shall—

(1) negotiate in good faith with any cable system operator regarding franchise renewal within 30 days after the completion of proceedings pursuant to subsection (b); and

(2) make a final decision on granting or denying renewal within 12 months after receipt of an application;

(3) in the case of denial of an application—

(A) not make the final decision for at least 7 months from the date of receipt of the application; and

(B) notify the applicant by written statement, within 7 days after the final decision, of the reasons for the denial.

(e) Any renewal applicant adversely affected or aggrieved by a final decision of a franchising authority made pursuant to subsection (d), or by a failure of the franchising authority to act in accordance with subsection (d), may obtain a de novo review of such final decision in any court of competent jurisdiction. The existing franchise shall remain in effect pending the completion of such judicial review.

UNAUTHORIZED INTERCEPTION OR RECEEPTION

SEC. 610. (a) No person or government authority shall intercept or receive broadband telecommunications unless specifically authorized to do so by a cable system operator, channel programer, or originator of broadband telecommunications or as may otherwise be specifically authorized by Federal law.

(b) In order to safeguard the right of privacy and security of broadband telecommunications, such broadband telecommunications shall be deemed to be a "wire communication" within the meaning of section 2510(1) of title 18 of the United States Code.

(c) In the event that there may be any difference between the provisions of this section and chapter 119 of title 18 of the United States Code, or any regulations promulgated thereunder, it is the intent of the Congress that such chapter 119 shall be controlling.

PROTECTION OF SUBSCRIBER PRIVACY

SEC. 611. (a)(1) Except as provided in paragraph (2) of this subsection, no cable operator, channel programer, or originator of broadband telecommunications may use the cable system to collect personally identifiable information with respect to a cable subscriber, except upon the prior written or electronic consent of that subscriber.

(2) The provisions of paragraph (1) of this subsection shall not apply to the collection of information solely for billing purposes or to monitor whether there is unauthorized reception of cable telecommunications.

(3) A cable operator, channel programer, or originator of broadband telecommunications shall ensure that any such information is destroyed when the information is no longer used or to be used for the purposes for which it was collected.

(b) No cable operator, channel programer, or originator of broadband telecommunications shall disclose personally identifiable information obtained pursuant to subsection (a) of this section with respect to a cable subscriber, or personally identifiable information with respect to the services provided to or received by a particular cable subscriber by way of a cable system, except upon the prior written or electronic consent of the subscriber, or pursuant to a lawful court order authorizing such disclosure.

(c) If a court shall authorize or order disclosure, the cable subscriber shall be notified of such order by the person to whom such order may be directed, within a reasonable period of time before the disclosure is made, but in no event less than 14 calendar days.

(d) Each cable operator shall, at the time of entering into an agreement to provide cable telecommunications, and regularly thereafter, inform every subscriber of the rights of the subscriber under this section. Such information shall include a description of the nature of the information to be maintained by the cable operator, channel programer, or originator of broadband telecommunications, and the location and availability of such information.

(e) A cable subscriber shall have access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator, channel programer, or originator of broadband telecommunications. Such information shall be available to the subscriber at reasonable times and at a place designated by the cable operator, channel programer, or originator of broadband telecommunications.

(f) Any cable subscriber whose privacy is violated in contravention of this section, shall be entitled to recover civil damages as authorized and in the manner set forth in section 2520 of title 18 of the United States Code. This remedy shall be in addition to any other remedy available to such subscriber.

CRIMINAL AND CIVIL LIABILITY

SEC. 612. Nothing in this title shall be deemed to affect the criminal or civil liability of channel programers or cable operators pursuant to the law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that cable operators shall not incur such liability for any program carried on any public, educational, governmental, or other channel referred to in subsection (a) of section 606, or for any program required by law to be carried on any other channel.

PROGRAMING, SERVICES, AND FACILITIES

SEC. 613. (a) No State or political subdivision or agency thereof, or franchising authority, may require the provision of particular programing or other broadband services, or facilities, equipment, services, or other items of value which are not related to the provision of broadband telecommunications service.

(b) A franchising authority may require, as part of the initial franchise request for proposals—

(1) channel capacity for governmental access purposes; and

(2) the construction of cable system facilities or provision of other cable-related equipment.

(c) A cable operator may offer, but may not be required to provide, as part of basic service or any other tier of service—

(1) channel capacity for access uses; and

(2) particular services.

(d) The cable operator may replace or remove a particular service specified in the cable franchise as part of the basic service or any other

tier of cable service or telecommunications service, or cable system facilities or cable related equipment, in any case in which there has been a significant change in circumstances since the cable operator's offer to provide such service, facilities, or equipment. The cable operator may not be required to retain a specified service in any particular category of service other than basic service.

(e) Except as provided in subsection (c) of this section, a franchising authority may, in accordance with the provisions of this section, enforce any offer to provide particular basic service set forth in subsection (c) or particular cable services or telecommunications services or cable system facilities or cable-related equipment offered by a cable operator provided that the provision of such services, facilities, or equipment is specifically required by the franchise agreement.

(f) Notwithstanding the preceding provisions of this section, in any case in which a franchise agreement in effect on the date of the enactment of the Cable Telecommunications Act of 1983 requires the cable operator to provide particular programing, services, facilities, cable related equipment, or channel capacity for access uses, such requirements, subject to subsections (d) and (e), shall remain in effect for the term of the franchise and in accordance with the provisions thereof.

NO REGULATION AS COMMON CARRIER

SEC. 614. No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to impose on a cable system regulation as a common carrier or a utility to the extent that such cable system provides broadband telecommunications service other than basic telephone service.

MINORITY VIEWS OF MR. LAUTENBERG

For a variety of reasons, I am unable to support S. 66 in its present form.

One of the principal purposes of this legislation, as I understand it, is to promote the expansion and development of cable television, by removing many of the bottlenecks and reducing many of the costs imposed by local governmental franchising agencies. In a State like New Jersey, however, the existing regulatory framework has apparently worked quite well.

Since 1972, New Jersey has had in place a statewide scheme for franchising and regulating cable television. The State has uniform franchising procedures. Franchise fees to municipalities are subject to a 2 percent ceiling. The State's office for cable television regulation has issued a statewide common tariff on basic rates. The result is that franchising has proceeded quickly. Cable passes 82 percent of the homes in New Jersey and the owners of more than half of those homes subscribe. New Jersey is the first State to have a statewide cable interconnect, accomplished in part through the participation of State regulators. In sum, New Jersey could be the most "wired" State in the Nation. For my State, this legislation does not appear to be a prerequisite to the development of cable television.

Moreover, for other States, where cable television is not yet so widespread, it is questionable whether S. 66 will substantially speed the process of getting cable into people's homes. What the bill will do, however, in New Jersey and in other States, is limit competition, and in various respects disserve the interests of cable television consumers.

When a cable system franchise comes up for renewal, the bill would place the burden on the franchising agency to show why a renewal should not be granted. Even where a franchising agency has good cause to remove a franchise, the process promises to be expensive, drawn out, and tangled in litigation. While I would not oppose some mechanism for fairly compensating an operator whose property is taken over by a succeeding franchisee, I see no persuasive case for barring the consideration of competing franchise applicants. As it stands, though, the bill does not promote competition. It limits it.

S. 66, as reported, would also deregulate the rates charged for basic service. Specifically, deregulation would occur in areas falling within the B-contour of four television stations, three of which are network affiliates. I understand that the rationale behind this deregulation is that television viewers have an alternative if they find deregulated rates too high. They can erect their home roof antenna and tune in local broadcasters' over-the-air signals. So, the argument goes, basic rates would be subject to the pressures of the marketplace.

I am not persuaded. The criteria in the bill would result in the deregulation of basic rates in areas where there are no reasonable alter-

natives. For example, virtually all of my State would be deregulated under the bill. That would include farflung rural areas long served by so-called classic cable systems—that is, systems that serve a need for clear reception, systems that have penetration rates of 70 percent, 80 percent, or 90 percent. Certainly, until the people in those areas have a reasonable, cost competitive alternative to cable-fed reception, their rates should not be deregulated.

The bill also expressly states that no agency of government shall treat cable systems as a common carrier. So, a franchising agency is not free to require the provision of channels for leased access at fair market value. Moreover, as cable may indeed fulfill the promise of becoming a second critical wire into the home, it is unwise to presume that common carrier treatment would always be unjustified.

I have heard the argument that legislation is needed now to free cable television from the regulatory constraints that prevent it from competing on an even playing field with other technologies, like direct broadcast satellite, multipoint distribution systems, video cassettes and discs. As far as I can tell, however, no technology yet matches cable in offering the diversity and potential range of services from a single source. Nor have I seen any great body of evidence that cable is fast becoming a threatened industry. What is apparent, however, is that this legislation would provide substantial protection to cable systems that, in many respects, operate as local monopolies. On these grounds, the systems should be subject to reasonable regulation and competition, to serve the public interest.

FRANK R. LAUTENBERG.

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